

IC 33-28-5

Chapter 5. Circuit and Superior Court Jury Selection and Service

IC 33-28-5-1

"Courts" defined

Sec. 1. As used in this chapter, "courts" means the circuit and superior courts of a county that choose to follow the procedure for jury selection and service set out in this chapter.

As added by P.L.98-2004, SEC.7.

IC 33-28-5-2

"Juror qualification form" defined

Sec. 2. As used in this chapter, "juror qualification form" means the form prescribed for use by the courts and mailed to each prospective juror, or an electronic data processing facsimile of the form that may be created on magnetic tape, punched cards, or computer discs.

As added by P.L.98-2004, SEC.7.

IC 33-28-5-3

"Jury commissioner" defined

Sec. 3. As used in this chapter, "jury commissioner" means the court administrator or the clerk of the court and includes a deputy court administrator designated by the jury commissioner periodically to act in the jury commissioner's place.

As added by P.L.98-2004, SEC.7.

IC 33-28-5-4

"Jury wheel" defined

Sec. 4. As used in this chapter, "jury wheel" means any list, physical device, or electronic system for the storage of the names or identifying numbers of prospective jurors.

As added by P.L.98-2004, SEC.7.

IC 33-28-5-5

"Master list" defined

Sec. 5. As used in this chapter, "master list" means:

- (1) a serially printed list;
- (2) a magnetic tape;
- (3) an addressograph file;
- (4) a punched card file;
- (5) a computer record; or
- (6) another form of record determined by the supervising judge to be consistent with this chapter;

that fosters the policy and protects the rights secured by this chapter, contains all current, up-to-date voter registration lists for each precinct in the county, and is supplemented by names derived from other sources identified under this chapter.

As added by P.L.98-2004, SEC.7.

IC 33-28-5-6**"Qualified jury wheel" defined**

Sec. 6. As used in this chapter, "qualified jury wheel" means the jury wheel in which there are placed the names or identifying numbers of prospective jurors drawn at random from the master list and who are not disqualified.

As added by P.L.98-2004, SEC.7.

IC 33-28-5-7**"Supervising judge" defined**

Sec. 7. As used in this chapter, "supervising judge" means a judge of the courts who is designated by the judges of the courts to supervise the jury selection process.

As added by P.L.98-2004, SEC.7.

IC 33-28-5-8**"Voter registration lists" defined**

Sec. 8. As used in this chapter, "voter registration lists" means the official records of persons registered to vote.

As added by P.L.98-2004, SEC.7.

IC 33-28-5-9**Uniform system of jury selection**

Sec. 9. The jury commissioner and supervising judge under the plan required by section 13 of this chapter shall provide a uniform system of jury selection for the courts ensuring that:

- (1) persons selected for jury service are selected at random from a fair cross-section of the population of the area served by the courts; and
- (2) qualified citizens have the opportunity under this chapter to:
 - (A) be considered for jury service in the county; and
 - (B) fulfill their obligation to serve as jurors when summoned for that purpose.

As added by P.L.98-2004, SEC.7.

IC 33-28-5-10**Responsibility for selection of jurors; computerized jury selection system**

Sec. 10. (a) The supervising judge is responsible for the selection of jurors as prescribed by this section.

(b) The supervising judge may authorize use of a computerized jury selection system under this chapter.

(c) A system authorized under subsection (b) must be fair and may not violate the rights of persons with respect to impartial and random selection of prospective jurors. Jurors selected under a computerized selection system must be eligible for selection under this chapter.

As added by P.L.98-2004, SEC.7.

IC 33-28-5-11**Court administrator as jury commissioner; powers and duties**

Sec. 11. (a) The court administrator shall serve as the jury commissioner for the county and has the powers and shall perform the duties prescribed in this chapter for the jury commissioner under the direction of the supervising judge.

(b) When acting as jury commissioner, the court administrator may not receive any compensation in addition to the court administrator's regular salary.

(c) The court administrator may delegate certain duties of the jury commissioner to a deputy court administrator with the approval of the supervising judge.

As added by P.L.98-2004, SEC.7.

IC 33-28-5-12

Plan for selection of grand and petit jurors

Sec. 12. (a) Under the supervision of the supervising judge, the jury commissioner shall prepare a written plan for the selection of grand and petit jurors in the county. The plan must be designed to achieve the objectives of, and otherwise comply with, this chapter. The plan must specify the following:

- (1) Source of names for the master list.
- (2) Form of the master list.
- (3) Method of selecting names from the master list.
- (4) Forms of and method for maintaining records of names drawn, jurors qualified, and juror's excuses and reasons to be excused.
- (5) Method of drawing names of qualified jurors for prospective service.
- (6) Procedures to be followed by prospective jurors in requesting to be excused from jury service.
- (7) Number of petit jurors that constitutes a panel for civil and criminal cases or a description of the uniform manner in which this determination is made.

(b) The plan must be placed into operation after approval by the judges of the courts. The judges of the courts shall examine the plan to determine whether it complies with this chapter. If the plan is found not to comply, the court shall order the jury commissioner to make the necessary changes to bring the plan into compliance.

(c) The plan may be modified at any time according to the procedure specified under this chapter.

(d) The plan must be submitted by the jury commissioner to the judges of the courts. The judges of the courts shall approve or direct modification of the plan not later than sixty (60) days after its receipt. The approved plan must go into effect not later than sixty (60) days after approval by the judges of the courts.

(e) The plan is a public document on file in the office of the jury commissioner and must be available for inspection at all reasonable times.

As added by P.L.98-2004, SEC.7.

IC 33-28-5-13

Master list of registered voters

Sec. 13. (a) The jury commissioner shall compile and maintain a master list consisting of all the voter registration lists for the county, supplemented with names from other lists of persons resident in the county that the supreme court shall periodically designate as necessary to obtain the broadest cross-section of the county, having determined that use of supplemental lists is feasible. The supreme court may designate supplemental lists for use by the courts periodically in a manner that fosters the policy and protects the rights secured by this chapter. Supplemental sources may consist of lists of:

- (1) utility customers;
- (2) property taxpayers; and
- (3) persons filing income tax returns, motor vehicle registrations, city directories, telephone directories, and driver's licenses.

Supplemental lists may not be substituted for the voter registration list. In drawing names from supplemental lists, the jury commissioner shall avoid duplication of names.

(b) A person who has custody, possession, or control of any of the lists making up or used in compiling the master list, including those designated under subsection (a) by the supreme court as supplementary sources of names, shall furnish the master list to the jury commissioner for inspection, reproduction, and copying at all reasonable times.

(c) When a copy of a list maintained by a public official is furnished, only the actual cost of the copy may be charged to the courts.

(d) The master list of names is open to the public for examination as a public record. However, the source of names and any information other than the names contained in the source is confidential.

As added by P.L.98-2004, SEC.7.

IC 33-28-5-14**Drawing of names; time; filing**

Sec. 14. (a) Names must be drawn for juror service quarterly, based on a calendar year commencing in January. A public drawing of names for the next quarter must be held during the first week of the second month of the quarter next preceding that for which names are being drawn, at a time and place prescribed by the jury commissioner.

(b) The jury commissioner shall create and file an alphabetical list of names drawn under this section. The alphabetical list may be in the form of a serial listing or discreet records (such as punched cards, addressograph plates, or computer records) filed together to constitute the alphabetical list. Names may not be added to the alphabetical list, except by order of the court. The names drawn or any list compiled from the alphabetical list may not be disclosed to any person other than under this chapter or by order of the supervising judge.

(c) The number of names required to be drawn each quarter must be determined by the jury commissioner after consultation with all judges of the courts who may conduct jury trials during the quarter, taking into consideration the number of jurors required for the grand jury.

(d) The frequency of the drawing of names may be increased by the jury commissioner if the jury commissioner determines it necessary for purposes of fairness, efficiency, or to ensure compliance with this chapter.

(e) Names must be drawn randomly under section 16 of this chapter.

(f) Names drawn from the master list may not be returned to the master list until all nonexempt persons on the master list have been called.

As added by P.L.98-2004, SEC.7.

IC 33-28-5-15

Procedure for drawing names

Sec. 15. Assuming the master list contains names in some sequential order, such as an alphabetical or a numeric sequence, the drawing of names from the master list must be performed in the following manner:

(1) The total number of names on the master list is divided by the number of names to be drawn. The next whole number greater than the resulting quotient is the key number, except that the key number is never less than two (2).

(2) A starting name for making the selection is determined by randomly choosing a number between one (1) and the key number, inclusive.

(3) The required number of names is selected beginning with the starting name selected under subdivision (2) and proceeding to successive names appearing in the master list at intervals equal to the key number, recommencing at the beginning of the list until the required number of names is selected.

(4) Upon recommencing at the beginning of the list, or if additional names are subsequently ordered to be drawn from the master list, names previously selected in the process described in subdivision (3) must be disregarded in selecting the additional names.

(5) An electronic or a mechanical system may be used to draw names from the master list.

As added by P.L.98-2004, SEC.7.

IC 33-28-5-16

Juror qualification form; mailing; contents; failure to return; questioning prospective jurors

Sec. 16. (a) Not later than seven (7) days after the date of the drawing of names from the master list, the jury commissioner shall mail to each person whose name is drawn a juror qualification form. The form must be accompanied by instructions to fill out and return

the form by mail to the jury commissioner not later than ten (10) days after its receipt. The instructions must state that requests for excuse from jury service during the next jury term should accompany the return of the qualification form.

(b) The juror qualification form must be designed by the jury commissioner and subject to approval by the judges of the courts as to matters of content and must elicit:

- (1) the prospective juror's name, address, and age; and
- (2) whether the prospective juror:
 - (A) is a citizen of the United States and a resident of the county;
 - (B) is able to read, speak, and understand English;
 - (C) has any physical or mental disability impairing the person's capacity to render satisfactory jury service; or
 - (D) has had rights revoked by reason of a felony conviction and not restored.

The juror qualification form must contain the prospective juror's declaration that the responses are true to the best of the prospective juror's knowledge. Notarization of the juror qualification form is not required.

(c) If a prospective juror is unable to fill out the form, another person may fill out the form for the prospective juror. If the form is completed by a person other than a prospective juror, the form must indicate that another person has done so and the reason for doing so.

(d) If it appears there is an omission, ambiguity, or error in a returned form, the jury commissioner shall resend the form, instructing the prospective juror to make the necessary addition, clarification, or correction and to return the form to the jury commissioner not later than ten (10) days after its second receipt.

(e) A prospective juror who fails to return a completed juror qualification form as instructed must be directed by the jury commissioner to immediately appear before the jury commissioner to fill out a juror qualification form.

(f) When a prospective juror appears for jury service, or when there is an official conversation with the supervising judge or jury commissioner, a prospective juror may be required to fill out another juror qualification form in the presence of the supervising judge or jury commissioner. At this time, the prospective juror may be questioned, but only with regard to responses to questions contained on the form and grounds for the prospective juror's excuse or disqualification. Information acquired under this subsection by the supervising judge or jury commissioner must be noted on the juror qualification form.

As added by P.L.98-2004, SEC.7.

IC 33-28-5-17

Failure to appear; misrepresentation

Sec. 17. (a) A prospective juror who fails to appear as directed by the jury commissioner under section 16 of this chapter must be ordered by the supervising judge to appear and show cause for the

failure to appear as directed. If the prospective juror fails to appear under the supervising judge's order or fails to show good cause for the failure to appear as directed by the jury commissioner, the prospective juror is guilty of criminal contempt.

(b) A person who knowingly misrepresents a material fact on a juror qualification form for the purpose of avoiding or securing service as a juror commits a Class C misdemeanor.

As added by P.L.98-2004, SEC.7.

IC 33-28-5-18

Disqualification or excuse from jury service

Sec. 18. (a) The supervising judge or the jury commissioner shall determine solely on the basis of information provided on a juror qualification form or interview with a prospective juror whether the prospective juror is disqualified for jury service. The jury commissioner shall enter this determination in the space provided on the juror qualification form or electronic data processing facsimile and on the alphabetical list of names drawn from the master list.

(b) A person may not be automatically excused under this chapter. Upon request of a prospective juror, the supervising judge or jury commissioner shall determine on the basis of information provided on:

- (1) the juror qualification form;
- (2) correspondence from the prospective juror; or
- (3) an interview with the prospective juror;

whether the prospective juror may be excused from jury service. The jury commissioner shall enter this determination in the space provided on the juror qualification form.

(c) A person who is not disqualified for jury service may be excused from jury service only upon a showing of:

- (1) undue hardship;
- (2) extreme inconvenience; or
- (3) public necessity;

until the time of the next drawing when the person is resummoned. Appropriate records must be maintained by the jury commissioner to facilitate resummoning.

(d) Requests for excuse, other than those accompanying the return of the qualification form, must be made by the prospective juror in writing to the jury commissioner not later than three (3) days before the date when the prospective juror has been summoned to appear.

As added by P.L.98-2004, SEC.7.

IC 33-28-5-19

Jury wheel; drawing for jury panel; summons

Sec. 19. (a) The jury commissioner shall maintain a qualified jury wheel and shall place in the jury wheel the names or identifying numbers of all prospective jurors drawn from the master list who are not disqualified or excused.

(b) The judges of the courts shall, by local court rule, specify the procedure to be used for:

(1) the selection of qualified prospective jurors under this section; and

(2) summoning qualified prospective jurors whose names are drawn from the qualified jury wheel.

(c) Upon receipt of an order for a grand jury, the jury commissioner shall publicly, and in accordance with section 20 of this chapter, draw at random from the qualified jury wheel twelve (12) qualified jurors and direct them to appear before the supervising judge. The supervising judge shall randomly select six (6) jurors after:

(1) explaining to the twelve (12) prospective jurors the duties and responsibilities of a grand jury; and

(2) excusing jurors under section 18 of this chapter.

(d) Whenever there is an unanticipated shortage of available petit jurors drawn from a qualified jury wheel, the supervising judge may require the jury commissioner to draw additional jurors at random from the qualified jury wheel. Talesmen may not be solicited from among bystanders or from any source except from among names drawn from the qualified jury wheel.

(e) The names of qualified jurors drawn from the qualified jury wheel and the contents of jury qualification forms completed by those jurors may not be made available to the public until the period of service of those jurors has expired. However, attorneys in any cases in which these jurors may serve may have access to the information.

As added by P.L.98-2004, SEC.7.

IC 33-28-5-20

Drawing of names from jury wheel

Sec. 20. The same method described in section 15 of this chapter for drawing names from the master list must be followed for drawing names from the qualified jury wheel unless the names in the qualified jury wheel are not in some sequential order as described in section 15 of this chapter. The key number system is not necessary if the names are in the form of ballots or in some other form requiring them to be blindly drawn from a container by hand.

As added by P.L.98-2004, SEC.7.

IC 33-28-5-21

Motion to stay proceedings or dismiss indictment for failure to comply with chapter

Sec. 21. (a) Not later than seven (7) days after a moving party discovers or by the exercise of diligence could have discovered grounds, but before a petit jury is sworn to try a case, a party may:

(1) in a civil case move to stay the proceedings; and

(2) in a criminal case move:

(A) to dismiss the indictment (if the case has been brought by indictment);

(B) to stay the proceedings; or

(C) for other appropriate relief;

on the ground of substantial failure to comply with this chapter in selecting the prospective grand or petit jurors.

(b) Upon a motion filed under subsection (a) containing a sworn statement of facts that, if true, would constitute a substantial failure to comply with this chapter, the moving party may present in support of the motion:

- (1) the testimony of the jury commissioner;
- (2) relevant records and papers not public or otherwise available used by the jury commissioner; and
- (3) other relevant evidence.

(c) If the court determines that in selecting either a grand jury or a petit jury there has been a substantial failure to comply with this chapter, the court:

- (1) shall stay the proceedings pending the selection of the jury in conformity with this chapter; and
- (2) may dismiss an indictment (if the case was brought by indictment) or grant other appropriate relief.

(d) The procedures required by this section are the exclusive means by which the state, a person accused of an offense, or a party in a civil case may challenge a jury on the ground that the jury was not selected in conformity with this chapter.

(e) The parties to the case may inspect, reproduce, and copy the records or papers of the jury commissioner at all reasonable times during the preparation and pendency of a motion under subsection (a).

As added by P.L.98-2004, SEC.7.

IC 33-28-5-22

Preservation of records; public inspection

Sec. 22. After the period of service for which names were drawn from the master jury list has expired, and all persons selected to serve as jurors have been discharged, all records and papers compiled and maintained by the jury commissioner or the clerk must be preserved by the clerk of the courts for the period prescribed by rule of the supreme court. The records and papers must be available for public inspection at all reasonable times.

As added by P.L.98-2004, SEC.7.

IC 33-28-5-23

Term of service

Sec. 23. (a) A person who appears for service as a petit or grand juror serves until the conclusion of the first trial in which the juror is sworn, regardless of the length of the trial or the manner in which the trial is disposed. A person who appears for service but is not selected and sworn as a juror completes the person's service at the end of one (1) day.

(b) A person who:

- (1) serves as a juror under this chapter; or
- (2) completes one (1) day of jury selection but is not chosen to serve as a juror;

may not be selected for another jury panel until all nonexempt persons on the master list have been called for jury duty.

As added by P.L.98-2004, SEC.7.

IC 33-28-5-24

Failure to comply with summons; criminal contempt; penalty

Sec. 24. A person summoned for jury service who fails to appear or complete jury service as directed must be ordered by the court to immediately appear and show cause for the person's failure to comply with the summons. If the person fails to show good cause for noncompliance with the summons, the person is guilty of criminal contempt and upon conviction may be fined not more than one hundred dollars (\$100) or imprisoned in the county jail for not more than three (3) days, or both.

As added by P.L.98-2004, SEC.7.

IC 33-28-5-25

Adoption of rules

Sec. 25. The supreme court may adopt rules, not inconsistent with this chapter, regulating the selection and service of jurors.

As added by P.L.98-2004, SEC.7.